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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,490	09/15/2008	Klaus Russke	KAR0117PCTUS	9725

62124 7590 06/15/2010  
QUINN LAW GROUP, PLLC  
39555 ORCHARD HILL PLACE  
SUITE # 520  
NOVI, MI 48375

EXAMINER
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PEDDER, DENNIS H

ART UNIT	PAPER NUMBER
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3612

MAIL DATE	DELIVERY MODE
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06/15/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/599,490	RUSSKE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dennis H. Pedder	3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 6/9/2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/2/2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Double Patenting***

.1 Applicants are advised that should claim 1 be found allowable, claim 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

.2 A convertible closure that attaches is releasable in reverse order.

.3 Applicant is believed to have interpreted the claims too narrowly, a common problem in translated claims. There is nothing in the claim language that would require as applicant states: "manually moving the convertible top from a pre-closure position to a catching position that, in turn, activates an automatic closure element", page 7 of the remarks. The claims merely state that the top is manually movable to some undefined catching position and is then "closable, automatically". These steps are not related necessarily in the claim as seen in the rejection below. For example, the automatic closing in Okada et al. effected through motor drive and sensor input, as stated by applicant, may come after manual movement of the switched off motor drive as taught by Porter et al. One can activate the motor after manual movement as an obvious choice. The rejection engendered below as a result of these prior art references could be overcome by deleting the phrase "in which the convertible top is closable, automatically" and replacing it with --which activates an automatic latching of the convertible top--. However, even with this amendment, no patentable distinction is seen as power activated latching devices are well known in this art as evidenced by the secondary rejection below.

***Claim Rejections - 35 USC § 112***

.4 The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

.5 Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Switch, especially a microswitch" is indefinite per the statute as the bounds of the claim are uncertain.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-3, 5-7,9, and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Okada et al. in view of Porter et al. and either Prenger et al. or Kaltz et al

4. Okada et al. have all claimed details less the disclosure for manual top movement and the handle for manually moving the top. Porter et al. teach, prior to the invention of applicant,

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(col. 4, lines 51-54) that motor failure of a convertible top can be overcome via manual movement and convertible top structure with a handle, allowing such manual movement is taught by either of the patents to Prenger et al. or Kaltz et al. in the shape of the front bow, fully graspable for closing.

5. It would have been obvious to one of ordinary skill to provide in Okada et al. manual override of a convertible top motor drive as taught by Porter et al. and a handle shaped front bow as taught by either Prenger et al. or Kaltz et al. in order to move the top manually upon automatic motor failure from a convenient position within the passenger compartment.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okada et al. in view of Porter et al. and either Prenger et al. or Kaltz et al. as applied to claim 1 above and further in view of Hacker.

7. It would have been obvious to one of ordinary skill to provide in the combination above a release operating element 26 as taught by Hacker in order to control the pre-opening of the roof or conversely to release the latch upon CPU failure.

8. Claims 1-7, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mertin et al. in view of Nagai et al. and either Prenger et al. or Kaltz et al.

9. Mertin et al. teach a power operated latching device for a convertible at a windshield header, col. 3, line 7, using a hydraulic motor.

10. Nagai et al. teach that a power operated latch for a manually driven vehicle lid comprises closure elements 6 and 8, motor drive unit "M" for the latch, wherein the lid is manually driven to a pre-closure position, and a catching position, figure 3, "in which the convertible top is closable, automatically" and wherein the device includes a sensor 35a, figure 5 and a control unit 47 to activate the element 8.

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11. Both Prenger et al. or Kaltz et al. teach that a convertible top frame may have a handle shape in order to grasp same.

12. It would have been obvious to one of ordinary skill to provide in Mertin et al. an electric power operated latch as taught by Nagai et al. and structure the convertible top as taught by either Prenger et al. or Kaltz et al. to enable manual grasping.

The combination as set forth above is obvious for the following reasons set forth in KSR INTERNATIONAL CO. V. TELEFLEX INC. ET AL. US SUPREME COURT, APRIL 30, 2007:

1) The combination of prior art elements according to known methods yields a predictable result.

2) The combination substitutes one known equivalent element for another to obtain a predictable result.

13. As to claim 3, dual latches for a convertible top are common knowledge in the art to ensure complete closure.

Applicant may seasonally challenge, for the official record in this application, this and any other statement of judicial notice in timely manner in response to this office action. Please specify the exact statement to be challenged. Applicant is reminded, with respect to the specific challenge put forth, of the duty of disclosure under Rule 56 to disclose material which is pertinent to patentability including claim rejections challenged by applicant.

14. As to claim 5, see operation via member 21.

15. As to claim 9, see the integrated unit in figure 2 of Nagai et al.

### ***Response to Arguments***

Please see the detailed action above, particularly paragraph .3.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (571) 272-6667. The examiner can normally be reached on 5:30-2:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis H. Pedder/  
Primary Examiner, Art Unit 3612

Dennis H. Pedder  
Primary Examiner  
Art Unit 3612

DHP  
6/14/2010